

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON SECRET
MILITARY ASSISTANCE TO IRAN AND
THE NICARAGUAN OPPOSITION

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 87-214

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION FOR ORDER IMMUNIZING TESTIMONY
AND OTHER INFORMATION PROVIDED BY GLEN A. ROBINETTE

The Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition is applying to this Court for an order immunizing testimony and other information which will be provided to it by one of its witnesses, Glen A. Robinette. The application is presented pursuant to 18 U.S.C. § 6005 which provides, in relevant part:

§ 6005. Congressional proceedings.

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee ... a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that--

(1) * * * *

(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress ... the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

This law provides the mechanism by which a witness before a congressional committee receives "use immunity" for testimony. The immunized witness remains subject to prosecution for the transactions about which he or she testifies if the government sustains the burden of proving at trial that it did not use the immunized testimony or its fruits in the prosecution. See Kastigar v. United States, 406 U.S. 441, 459-62 (1972). Because the court's inquiry on an application for an immunity order is narrow and its tests are mechanical, the application may be decided ex parte without a hearing. Ryan v. Commissioner of Internal Revenue, 568 F.2d 531, 540 (7th Cir. 1977), cert. denied, 439 U.S. 820 (1978).

Section 6005 sets out the two requirements for an immunity order, both of which have been met.^{1/} First, "in the case of a

^{1/} The Select Committee may apply for this order prior to summoning the witness to testify or provide information at one of its proceedings. In re Application of United States Senate Permanent Subcommittee on Investigations (Cammisano), 655 F.2d 1232, 1236-38 (D.C. Cir.), cert. denied, 454 U.S. 1084 (1981).

proceeding before a committee ... the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee." 18 U.S.C. § 6005(b)(2). The Select Committee's resolution (Exhibit A to the application), shows that the Committee approved this request for an order by a unanimous vote of its eleven members on June 4, 1987.

Second, "ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order." 18 U.S.C. § 6005(b)(3). Under 28 U.S.C. § 594(a) and (a)(7), an independent counsel has, for all matters within his prosecutorial jurisdiction, "full power and independent authority to exercise all investigative and prosecution functions and powers of the ... Attorney General ... includ[ing] ... for purposes of section[] ... 6005 of title 18, exercising the authority vested in ... the Attorney General." The testimony and other information sought to be compelled from the witness is within the investigative and prosecutorial jurisdiction that the special division of the District of Columbia Circuit has vested in Independent Counsel Lawrence E. Walsh. In re Oliver L. North, et al., Div. No. 86-6 (D.C. Cir. Division for the Purpose of Appointing Independent Counsels, Dec. 19, 1986). The accompanying certificate (Exhibit D) shows that Independent Counsel Lawrence E. Walsh was served with notice of our intention to request this order (Exhibit B); notice to the

Independent Counsel was given on June 4, 1987, which is "ten days or more prior to" today.^{2/}

Accordingly, the Select Committee requests that the Court issue an order immunizing the testimony and other information which Glen A. Robinette will provide at proceedings of the Select Committee.

Respectfully submitted,



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Dated: June 15, 1987

^{2/} On June 4, 1987, we also notified the Attorney General (Exhibit C) in the event that he believes that notice should also be provided to him notwithstanding 28 U.S.C. § 594(a)(7).